

**KENTUCKY PERSONNEL BOARD  
MINUTES OF FEBRUARY 9, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on February 9, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman  
Tina Goodmann, Vice-Chairman  
Betty Gibson, Member  
Lisa Hendricks, Member  
Rosemary Center, Member  
Jackson M. Andrews, Member  
Robert B. Frazer, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JAN. 12, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Mr. Andrews moved to approve the minutes as submitted, Ms. Goodmann seconded, and the motion carried 6-0. The Board members signed the minutes. (Chairman Higgins does not vote unless noted.)

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised the Board Members that the Attorney Generals' office would be training the Board staff on how to use the Special Grand Jury Database. This will enable staff to search thousands of documents in an efficient manner to further augment the Doug Doerting investigation.

Mr. Sipek stated that the Personnel Board staff had all received new computers and that the Board's computer system is now connected to the COT main state server. COT staff is also available to assist this office if there are any problems.

Mr. Sipek informed the Board Members of the passing of Bruce Middleton. Mr. Crocker read into the record a formal resolution honoring Mr. Middleton, a copy of which is attached hereto.

Ms. Morris read various e-mails from past Board members. Chairman Higgins asked for a moment of silence to honor Mr. Middleton.

#### 4. **PERSONNEL CABINET'S REPORT**

Tom Stephens, Director of Legal Services with the Personnel Cabinet, advised the Board of a Memorandum of Agreement with Veterans' Affairs. At Governor Fletcher's direction the Cabinet will provide funding and a position for the Kentucky Department of Veterans' Affairs (KDVA), Veterans Benefits Field Representative, until the KDVA can fund that position. This liaison will help veterans find state employment, translate veterans military experience into equivalent civilian-government language, will educate veterans about federal and state benefits and services for family members searching for work with the state, and will educate Personnel Cabinet counselors to appropriately evaluate veterans' training and experience levels. Mr. Crocker advised that he and Dennis Shepherd (KDVA) discussed how this will allow veterans to express themselves in real world terms. Mr. Sipek asked if that person would also be available to help other agencies regarding veterans' needs and Mr. Stephens agreed.

Mr. Stephens advised that in the past the Board had expressed interest in Supervisor Evaluation Training. This training is offered to new supervisors in state government before they can perform an evaluation. He would like to ask Branch Manager Johnny Keene to further discuss the evaluation process with the Board in March or April.

Mr. Stephens further advised that the Personnel Cabinet will have a new web site by the end of the month that is more user-friendly and quicker to access. Chairman Higgins asked if the new web site would enable applicants to apply on-line. Mr. Stephens advised that they are working on a system called KHRIS (Kentucky Human Resources Information System) where employees can apply on-line. However, this would probably require regulation updates and changes in the register process. KHRIS would be similar to USA.com or Monster.com where a resume could be stored on-line.

Ms. Hendricks asked Mr. Stephens about the additional funding (1.4 million dollars) for the HRA (Health Reimbursement Account). [Mr. Stephens cited 101 KAR 2:09E (emergency regulation).] Mr. Stephens asked Mr. Joe Cowles, General Counsel for Department of Employee Insurance, to come forward. Mr. Cowles explained that there would be 25,000 additional members joining. He again explained FSA (Flexible Spending Account) versus HRA and that the funds would rollover. He said that the Group Health Board meets each month to discuss issues and that maybe they would be able to provide some numbers at the next Board meeting.

#### 5. **PETITIONED POSITIONS - None**

#### 6. **ORAL ARGUMENTS**

##### A. Elizabeth Venzin v. Cabinet for Health and Family Services

Present were Hon. Amber Arnett, counsel for the Appellee, who had requested oral arguments; and Hon. Don Duff, counsel for the Appellant. The parties answered questions from the Board.

B. Ruth Walker v. Cabinet for Health and Family Services – 2 appeals

Present were Hon. Jonathan Hardy, counsel for the Appellant, who had requested oral arguments, and Hon. Ron Crawford, counsel for the Appellee. The parties answered questions from the Board.

7. **MOTIONS**

A. Lenny Ausbrooks v. Transportation and Marjorie Ann Stewart

Mr. Sipek stated that a Motion to Enforce the Board's Order had been filed by counsel for the Appellant. He also stated that there is a Motion for Stay had been filed by Intervenor Stewart before the Franklin Circuit Court. For this reason, he spoke with counsel for Appellee and advised there was no need to argue any motions before the Board and that what was in writing would be sufficient for discussion in closed session.

8. **CLOSED SESSION**

Mr. Frazer moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudication; Mr. Andrews seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), (j) and (k), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (10:40 a.m.)

Ms. Goodmann moved to return to open session, Ms. Gibson seconded, and the motion carried 6-0. (12:42 p.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the hearing officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Elizabeth Venzin v. Cabinet for Health and Family Services

Ms. Hendricks moved to note Appellee's exceptions, Appellant's response and oral argument, and to accept the recommended order sustaining the appeal to the extent that the dismissal was changed to a 30-day suspension. Ms. Center seconded and the motion carried 6-0.

B. Ruth Walker v. Cabinet for Health and Family Services – 2 appeals

Mr. Andrews moved to defer this matter to the next meeting of the Board, Ms. Gibson seconded and the motion carried 6-0.

C. Amanda Seigle, Marjorie Shular, and Gretchen Marshall v. Personnel Cabinet  
(Deferred from January)

Mr. Frazer moved to note Appellants' exceptions and responses, Appellee's exceptions and response, and oral arguments, and to revise the recommended order in accordance with the Final Order attached to these minutes. Mr. Andrews seconded and the motion carried 6-0.

D. Martin Snowden v. Environmental and Public Protection Cabinet

Ms. Center moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

E. Stuart Reed v. Education Cabinet

Ms. Gibson moved to note Appellee's exceptions and to accept the recommended order sustaining the appeal. Ms. Hendricks seconded and the motion carried 6-0.

F. Randall Arvin v. Transportation Cabinet

Ms. Center moved to accept the recommended order sustaining the appeal. Ms. Hendricks seconded and the motion carried 6-0.

G. Neil Carrington v. Education Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 6-0.

H. Vernon Damron v. Transportation Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

I. Robert Edwards v. Environmental and Public Protection Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

J. Julene Hopper v. Cabinet for Health and Family Services

Ms. Center moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

K. Kimberly Welsh v. Cabinet for Health and Family Services

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

L. Candy Walter v. Department of Juvenile Justice

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

M. Jerry Williams v. Department of Juvenile Justice

Ms. Gibson moved to accept the recommended order sustaining the appeal. Ms. Goodmann seconded and the motion carried 6-0.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute unless a statement was filed by the Appellant stating sufficient cause to excuse his failure to appear at the scheduled hearing. There was no response submitted by the Appellant to the show cause order.

N. Jason Spurr v. Department of Corrections

Mr. Frazer moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Ms. Gibson seconded and the motion carried 6-0.

10. **WITHDRAWALS**

Ms. Hendricks moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Goodmann seconded and the motion carried 6-0.

- A. Dennis Acree v. Department of Parks
- B. Ashley Baber v. Personnel Cabinet
- C. Karen Burns v. Personnel Cabinet
- D. Ruby Calloway v. Department of Juvenile Justice
- E. Heidi Compton v. Department of Corrections (2 appeals)
- F. Linda Dunn v. Personnel Cabinet
- G. Andrew Hamilton v. Personnel Cabinet
- H. Barbara Kaminer v. Personnel Cabinet
- I. Jonell Tackett v. Department of Parks
- J. John Wilson v. Personnel Cabinet
- K. Lowell Workman v. Personnel Cabinet
- L. Boyd Dick v. Personnel Cabinet
- M. David Herrera v. Personnel Cabinet (2 appeals)
- N. Larry Joe Parrott v. Personnel Cabinet
- O. Glennette Thrasher v. Education Cabinet

#### 11. **SETTLEMENTS**

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Hendricks seconded and the motion carried 6-0.

- A. Joseph Buckman v. Commerce Cabinet
- B. Linda Keathley v. Cabinet for Health and Family Services (2 appeals)
- C. Joyce Smith v. Cabinet for Health and Family Services

#### 12. **OTHER BUSINESS**

##### A. June 22, 2007 Board Meeting

Mr. Sipek advised the Board Members that Hearing Officer Training is scheduled for June 22, 2007, which is the same date as the Board Meeting. He stated that he and Mr. Crocker would like to attend that training and invited the Board Members to attend as well. June 21, 2007, was suggested as an alternate date for the June Board Meeting. Ms. Gibson moved to accept June 21, 2007, as the new date, Mr. Frazer seconded and the motion carried 6-0.

##### B. Discussion of Proposed Legislation

Mr. Sipek advised that he, Mr. Crocker and Mr. Andrews, along with others met with Representative Cherry on Monday, February 5, 2007, to discuss HB 62. One issue was increasing Personnel Board Members from seven to nine to provide two more classified

employee members. However, the Board would need additional funds (estimated at \$38,000) to hold another election. One possibility was to have the Board appoint two members from the recent election to fill in from July 1, 2008 to 2010. This would not only be cost-saving, it would be less burdensome to the Personnel Board, since all the terms would run together. Representative Cherry presented a committee substitute including this change, which was approved.

Secretary Crall and Mr. Stephens proposed an election change requirement that the Employee Unique Number be substituted for the Social Security Number. It was believed that more employees would vote, if they did not have to use their Social Security Number.

Mr. Sipek further advised that the proposal of written reprimands being appealable actions to the Board as a penalization was discussed. The Board has not taken a position on that proposal. In Mr. Sipek's estimation the most important issue in HB 62 was the provision requiring a grievance or mediation and peer review for all appeals except dismissals. Mr. Sipek expressed that the goal was to keep disputes at the lowest administrative level possible. Representative Cherry's bill adds extra hoops for employees to jump through and adds additional administrative steps for the agencies. Mr. Sipek stated that the end result (included in the committee substitute) was to make alternative dispute resolution options available (mediation and peer review). Mr. Andrews asked Secretary Crall to give his view. Secretary Crall stated that he concurred with Mr. Sipek and the Personnel Cabinet wants to work unofficially with the Board to get the quickest, least expensive, resolution for all parties.

Secretary Crall said that there were 4,500 written reprimands in the last year. If, for example, 10 percent were appealed, that could be 450 additional appeals filed with the Board. Secretary Crall had expressed his concern to Representative Cherry. Secretary Crall also understands employees' concerns that a written reprimand stays in their file indefinitely and that employees only get to respond in writing. This policy can negatively impact employees who apply for other jobs. Secretary Crall stated that an alternative could be a "sunset provision" for written reprimands. If after a period of time no further disciplinary action is taken against an employee the written reprimand would "roll off the record." He felt this was better than putting more volume on the Personnel Board, if written reprimands were to be considered disciplinary actions. He also stated that the agencies would most likely stop using written reprimands and go directly to a one-day suspension. Mr. Frazer asked if the sunset provision would have to be done by regulation. Mr. Sipek advised that the strongest position would certainly be to have it in the regulation. Another idea Mr. Sipek had was to make written reprimands grievable, which could provide faster relief for the employee than the sunset provision and was simpler than having an evidentiary hearing. Mr. Andrews asked Secretary Crall if he had the authority to expunge a written reprimand. Secretary Crall called upon Mr. Stephens to respond. Mr. Stephens advised there have been occasions in the past when a written reprimand had been removed by the Personnel Cabinet. In those instances, the agency petitioned to have them removed. Mr. Stephens further advised that at this time there is no way to technologically keep track and have written reprimands removed as called for under a sunset provision. However, once KHRIS is implemented, that is a possibility.

As to current policy, Ms. Hendricks asked if written reprimands can be appealed to a higher level. Secretary Crall responded they could, but as a practical matter employees are only permitted to respond in writing. Secretary Crall referenced the Yonts' amendment. Mr. Andrews asked what the Yonts' amendment was. Secretary Crall turned to Mr. Crocker for a response. Mr. Crocker said that the Yonts' amendment would require the Personnel Board to place final decisions on the Board's web site and make it searchable for the benefit of agencies and employees. However, orders were to be posted after the 30-day appeal period to the Franklin Circuit Court. Mr. Sipek advised that it is easy enough to delay posting.

Ms. Goodmann asked Secretary Crall about the definition of "qualifying" in reference to being placed on the register. Secretary Crall responded that his concern was more with the term "accurately measured." He stated tests are generic and not specific to any position. He finds that tests are becoming exclusionary for people who do not test well or who might otherwise be qualified. He stated one could not assume that tests accurately measure anything. It is difficult to come up with tests that accurately measure. There will be no change in testing positions to qualifying unless certain criteria are met.

Mr. Andrews said Representative Cherry did not discuss the policy of whether or not it is a good idea to increase employee Board members from two to four. Merit employees are currently represented at 28.6 percent and Representative Cherry's bill would increase it to 44.4 percent. He hopes this gets some consideration by the General Assembly before anything is enacted. However, Mr. Andrews stated that Representative Cherry did agree that having an election by July 2007 was not a good idea. That language was later removed from the bill. Mr. Andrews stated his opinion that a speedy election or addition could be perceived politically in this atmosphere in a way that reduces the credibility of the Board. Chairman Higgins wanted to know the harm of increasing representation from 28.6 percent to 44.4 percent. Mr. Andrews responded that it would be the public's perception of the "fox being in charge of the henhouse." He further stated that the Board's purpose is to make sure the merit law is administered properly. Chairman Higgins agreed that public perception is important and the General Assembly represents the people. Mr. Andrews stated that although some recommendations in the bill came from the Blue Ribbon Task Force, some were add-ons. Mr. Sipek also agreed that public perception is important, but it is wrong to perceive that if a Board member is appointed by the Governor that member will always side with the administration and the same thing could be said for classified employee Board members siding with employees. Mr. Sipek further stated that from his experience Board Members take their oaths seriously. Mr. Frazer voiced concern too about the possible motivation. Ms. Hendricks stated that there should be a balance on both sides, but wondered if there have been issues in the past. Ms. Center asked when did the Board begin to have state employee members and Mr. Crocker advised since 1986. Secretary Crall stated that the Executive Branch executes public policy that the General Assembly passes.

C. Secretary Crall discussed changes to SB 58 concerning the reorganization of the Personnel Cabinet. The main concern was the language that implied that the Personnel Board was under the direction of the Personnel Cabinet. Mr. Sipek advised that the Attorney General's office voiced some concern as it related to investigations. Mr. Sipek proposed language that states: "Nothing in this provision shall take away from the authority granted to the Personnel Board in KRS 18A.075." Secretary Crall agreed and said he would support additions to the



language. Chairman Higgins entertained motions to add language. Ms. Goodmann moved to add language, Mr. Frazer seconded and the motion carried 6-0.

D. Mr. Crocker advised that two Board Members, Mr. Andrews and Ms. Center, would appear before the Senate on February 14, 2007. Three Board Members, Mr. Frazer, Ms. Gibson and Ms. Hendricks, would appear before the Senate on February 21, 2007.

There being no further business, Mr. Frazer moved to adjourn, Ms. Hendricks seconded, and the motion carried 6-0. (1:50 p.m.)

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Greg Higgins, Chairman

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Tina Goodmann, Vice-Chairman

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Betty Gibson, Member

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Lisa Hendricks, Member

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Rosemary Center, Member

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Jackson M. Andrews, Member

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Robert B. Frazer, Member